



DOWNTOWN AREA SCHOOL DISTRICT

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Raymond Kase

Director of Technology

Before the

Federal Communications Commission

Washington, DC 20554

In the Matter of)	
)	
Requests for Review or Waiver of)	
Decisions of the)	
Universal Service Administrator by)	
)	
Academia Avance)	SLD Nos. 818811 et al.
Los Angeles, California et al.)	
)	
Schools and Libraries Universal Service)	CC Docket No. 02-6
Support Mechanism)	

Application for Review of the Downingtown School District

I. Introduction

The Downingtown School District ("Downingtown" or "District") (SLD Entity # 126198) respectfully applies to the Federal Communications Commission ("FCC" or "Commission") for review of the Order on Reconsideration denying the Petition for Reconsideration of the Downingtown School District ("Downingtown" or "District"). The District had submitted a timely petition for reconsideration of the Order released on August 30, 2013 at DA 13-849 which dismissed the District's Petition for Reconsideration submitted on March 20, 2013.¹ The Petition for Reconsideration sought to overturn the Bureau's decision to not

¹ The contact person for this appeal is Raymond Kase, rkase@dasd.org, telephone number 610 269 8460, Ext. 6115.

grant a waiver of the 60 day deadline for submitting an appeal from a decision of the universal service administrator.²

The District appealed a November 8, 2012 Form 486 Notification Letter that adjusted the service start date to June 27, 2011 for three FY 2011 funding requests.³ The combined effect of the three 486 Notification Letters was to rescind \$92,488.00 of the originally approved \$100,896.00 funding. The District's January 30, 2013 appeal also sought a waiver of the 60 day deadline for submitting an appeal of a decision of the Universal Service Administrator (47 C.F.R. §54.720).

The Wireline Competition Bureau's initial *Carbondale Appeal Order* issued by the Telecommunications Access Policy Division found that the District had not demonstrated that special circumstances exist to justify waiver of the filing deadline. The merits of the underlying appeal were not reached. The District's timely filed Petition for Reconsideration was denied by the Wireline Competition Bureau because the Bureau claimed that the Petition failed to identify any material error, omission, or reason warranting reconsideration and relied on arguments that have been fully considered and rejected by the Bureau.

At no point has there been any review of the merits of the District's appeal because the 60 day deadline for submitting the appeal has not been waived. The District submits that it has good cause for waiver and can show its good cause is consistent with the Commission's policy for granting waivers of the 60 day deadline.

² *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Academia Avance, et al.*, Order released August 30, 2013, DA 13-849 ("*Academia Avance Order*").

³ FRN 2201220, Form 471 # 810388; FRN 2216835, Form 471 # 815561; FRN 2217132, Form 471 # 815703.

II. Applicable Legal Standards

The Commission should grant an application for review when it is shown, *inter alia*, that action taken pursuant to delegated authority is in conflict with a statute, regulations, case precedent, or established Commission policy; the action involves a question of law or policy which has not previously been resolved by the Commission; or prejudicial procedural error. 47 C.F.R. § 1.115(b)(2). The District believes that the Bureau failed to fully consider the arguments and factual information put forth in the Petition for Reconsideration, and failed to follow established Commission policy. Also this appeal raises a question of law or policy which has not been previously resolved by the Commission.

III. Grounds for Application for Review

A. The 60 Day Deadline from a Form 486 Notification Should Not Be Counted from the Date of the Letter Because the Letter Does Not Clearly Applicants Subject to an Adjusted Service Start Date that the Letter is Essentially A Commitment Adjustment and Rescinds Funding Approval.

The District received the Form 486 Notification Letters on November 8, 2012. The 60 day appeal period expired on January 7, 2013. The District filed its Request for Review on January 30, 2013 or 26 days past the deadline.

When the District received the Form 486 Notification Letters, however, the District did not actually comprehend or understand the significance of the letters and that they represented a loss of almost all of the funding for the three FRNs (except for funding from June 27, 2011 through June 30, 2011). The District only learned of this loss upon communicating with the Pennsylvania State E-rate Coordinator on January 28, 2013 when

we spoke to her about preparing our BEAR forms. She explained the significance of the adjusted service start date. The District then immediately filed a Request for Review within two days of discovering this predicament.

Although the Commission may believe that its rules are clear and that the administrator's communications clearly communicate that failure to timely file a form 486 results in a loss of funding, the 486 notification is convoluted and does not plainly state that it is essentially a commitment adjustment letter (COMAD).

The first page of the letter obliquely refers to "If you wish to appeal the Service Start Date change(s) and/or funding commitment adjustment(s) indicated in this letter, your appeal must be received by USAC or postmarked within 60 days of the above date of this letter." The term "funding commitment adjustment" is not explained anywhere in the letter and certainly does not explain that the adjustment is in fact a *rescission of funding*.

The actual notification of the adjustment is shown on the last page of each letter and is just as opaque. Nowhere does the letter explain that there is a reduction in funding due to the adjusted service start date. Also the adjusted service start date is not explained in the letter.

Funding Request Number: 2216835
Form 471 Application Number: 815561
Service Provider Name: XO Communications, Inc
Service Provider Identification Number: 143000093
Billing Account Number: 610-269-8460
Service Start Date: 06/27/2012*
Service Start Date Change Explanation: 120-DAY 486 DEADLINE
Adjusted Funding Commitment: \$5,722.00

Funding Request Number: 2217132
Form 471 Application Number: 815703
Service Provider Name: Chester County Community Net. Inc.
Service Provider Identification Number: 143004423
Billing Account Number: 610-269-8460
Service Start Date: 06/27/2012*
Service Start Date Change Explanation: 120-DAY 486 DEADLINE
Adjusted Funding Commitment: \$1,246.00

Funding Request Number: 2201220
Form 471 Application Number: 810388
Service Provider Name: Verizon Wireless
Service Provider Identification Number: 143000677
Billing Account Number: 610-269-8460
Service Start Date: 06/27/2012*
Service Start Date Change Explanation: 120-DAY 486 DEADLINE
Adjusted Funding Commitment: \$1,440.00

The District believes that the letters do not provide adequate notice and explanation of their significance. The District, therefore, should not be bound by the 60 day deadline running from the date of the 486 notification letter because the letter fails to provide actual notice of the rescission of funding. Instead the appeal period should be counted from when the District first discovered that the rescission of funding occurred, on January 28, 2013 when the District technology director spoke to the Pennsylvania E-rate Coordinator who explained the situation to him.

B. The District Filed Its Appeal Promptly Upon Receiving Actual Notice of USAC's Adverse Decision.

Even if the FCC does not accept the District's suggestion that the appeal period should begin from January 28, 2013, the Commission should grant the waiver because the appeal was filed relatively close to the appeal deadline as counted from the 486 notification letter (January 8, 2013) and is consistent with prior cases granting appeals of the 60 day appeal deadline.

In granting waivers of the 60 day appeal deadline, the FCC appears to be persuaded by two considerations: appeals filed soon after the deadline⁴ and appeals filed promptly

⁴ *Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885 at ¶6. (Children of Peace filed the appeal 12 days late and other applicants filed appeals a few days late). See also *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Aberdeen School District 5, et al.*, Order released March 5, 2010, DA 12-300 at n.9 (Bethlehem Center Head Start filed the appeal a few days late).

after discovering there is an appealable problem⁵ will be considered on their merits. The Downingtown appeal meets both criteria.

The Form 486 Notification Letters were dated November 8, 2012. The 60 day appeal period tolled on January 8, 2013. The appeal was filed 25 days after the deadline. Downingtown submits this is relatively close to the original deadline and the Commission has granted other waivers when the applicant filed within this time frame.

In Request for Review and/or Requests for Waiver of the Decisions of the Universal Service Administrator, by Animas School District 6, et. al, DA 11-2040, Order, CC Docket No. 02-6 (Order released December 22, 2011), the FCC waived the 60 day deadline for *inter alia* the Animas School District, the Caldwell Independent School District and City Charter High School. The Animas School District filed their appeal of a funding denial that was set forth on a funding commitment decisions letter dated December 10, 2008. The 60 day appeal deadline expired on February 10, 2009 but the District did not file their appeal until February 25, 2009 or 15 days later. The Caldwell Independent School District filed its appeal of a funding commitment decisions letter October 15, 2005—which was due by December 14, 2005 – on January 30, 2006, or approximately 45 days late. The City Charter High School filed its appeal 11 days late. In all three situations the FCC waived the 60 day appeal deadline.

These situations show that the Commission has exercised its discretion to grant waivers when appeals are more than a few days late. Downingtown’s appeal falls into this category and should be treated consistent with the precedents cited above.

⁵ *Requests for Review and/or Waiver of Decisions of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011 at ¶2; See also *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Bancroft Neurohealth, et al.*, Order released August 3, 2011 at ¶2; See also *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Annunciation Elementary School, et al.*, Order released June 18, 2012 at ¶1.

Second, as explained above regarding lack of actual notice of the adverse decision, Downingtown only discovered that the letter needed to be appealed on January 28, 2013. This is when the District began preparing its BEAR forms and realized that the funding had been mostly rescinded. The District immediately prepared and filed the appeal just a few days later.⁶ Moreover, the District's BEAR Notifications Letters of February 6, 2013 now provide a basis for a timely appeal.

Third, The District immediately filed the BEAR forms, and chose to appeal immediately to the FCC on the basis of the Form 486 Notification Letter rather than await receipt of the BEAR Notification letters. Two of the BEAR Notification Letters have since been issued on February 6, 2013 and are attached as Exhibit A. These documents were not available when the District's originally filed appeal and request for waiver of the 60 day appeal deadline to the FCC was submitted on January 30, 2013. appeal and request for waiver was submitted by the District. Both of the BEAR notification letters authorized reduced funding in accordance with the 486 adjusted service start date.

C. The District Could Have Opted Instead to Wait to Receive BEAR Notification Letters that Reduced Funding Consistent with the Adjusted Service Start Dates and Timely Submitted Appeals of those Decisions Which Would Address The Very Same Adjusted Service Start Date Issue In this Appeal.

Had the District waited to receive the BEAR Notification Letters before appealing, the net result would have been the same: the appeal would challenge the reduction of funding due to the adjusted service start date set forth on the Form 486 Notification Letter. The only

⁶ This is certainly not a situation like that described and addressed in the *Agra Public Schools I-134, et al* decision where the appeals were filed so long after the deadline that considering it on its merits would make it difficult for USAC and the FCC to estimate how much money should be included in the appeals reserve fund. *Requests for Review of Decisions of the Universal Service Administrator by Agra Public Schools I-134, et al.*, Order released May 26, 2010.

difference is that had an appeal taken of the BEAR Notification Letters, there would have been no question that the appeal was submitted on time.

Clearly, therefore, the appeal taken from the Form 486 Notification Letter may be amended to now include a timely appeal of the BEAR Notification Letters for these FRNs. This Petition for Reconsideration may be considered, in the alternative, an appeal from the February 6, 2013 BEAR Notification Letters.

In some instances, the FCC measures appeal timeliness based on the date of the BEAR notification letter that reduces funding.⁷ In other instances, the FCC measures appeal timeliness on the basis of the date of the Form 486 Notification Letter in which the service start date is adjusted. In yet other instances, the appeal timeliness is based on some other event such as denial of an invoice deadline extension request, when the denial is based on no form 486 having been filed.⁸ In all of these situations, however, the common

⁷ In *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy St. Benedect-Stewart, et al.*, DA 10-2352, Order released December 16, 2010, the Commission granted an appeal of the Buckingham County Public Schools in which the District appealed a reduced BEAR authorized disbursement that was due to an adjusted service start problem. The BEAR form was filed months after the District had received the Form 486 Notification Letter – certainly longer than 60 days – and the FCC appeal was filed within 60 days of the receipt of the BEAR notification letter. See <http://apps.fcc.gov/ecfs/document/view?id=6518192568>. The Form 486 Notification Letter was dated April 27, 2005 and the BEAR Form 472 Notification Letter was dated November 1, 2005. The appeal of the reduction in funding was filed on December 21, 2005. The FCC granted the waiver of the 60 day deadline for appealing the Form 486 Notification Letter, finding that the appeal had been timely filed.

In *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237 which was released just a few days after the *Carbondale Appeal Order*, the FCC granted a 486 waiver based on an appeal of a BEAR notification letters that reduced funding due to a 486 adjusted service start date. Florence Independent School District appealed an adjusted service start date on January 10, 2013. Florence had received a BEAR notification letter dated November 8, 2012 that stated that the applicant had not filed a form 486. Then the district filed the form 486, received the adjusted service start date letter on November 29, 2012 and appealed that determination.

⁸ In *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237 the FCC approved two appeals that Morton High School 201 filed on December 10, 2012 seeking a waiver of the 486 deadline for a FY 1998 and a FY 2006 FRN. Both appeals were based on invoice deadline extension requests that were denied by letters dated October 11, 2012. Each letter stated that a form 486 had not been submitted for the FRNs in question. Because the appeal was filed within 60 days of the date of the denials of the invoice deadline – even though

denominator is that the applicant missed the 120 day deadline for submitting the Form 486. Sometimes the applicant realizes this problem upon reviewing the form 486 Notification Letter. More frequently the problem becomes obvious when the applicant tries to submit a Form 472 BEAR reimbursement and discovers that the Form 486 has not been filed or that the service start date was previously adjusted because the form 486 was submitted late.

Since Downingtown also has a right to appeal from the February 6, 2013 BEAR Notification Letters issued for two of the three funding requests, and will have a right to appeal the third BEAR Notification Letter once it is issued, the Bureau should grant reconsideration and consider this appeal to be timely and based on an appeal of the February 8, 2013 BEAR Notification Letters which reduced the authorized disbursements to funding for the period June 27, 2012 through June 30, 2012 in accordance with the adjusted service start dates of the three FRNs as set forth in the November 8, 2012 486 Notification Letters.⁹

D. The District Experienced Special Circumstances That Have Been Found To Warrant Waiver of the 60 Day Deadline in Other Cases.

The District experienced a transition in personnel who are responsible for E-rate filings and compliance. During that transition, the District made every effort to ensure that all required forms were submitted on a timely basis and that all SLD correspondence was

the deadline for submitting the form 486 applications had long since passed – the appeals were considered timely.

⁹ The District believes this issue raises a new policy issue that has not previously been addressed by the Commission and its Application for Review should be granted on this basis as well. Notably, the FCC has waived the 60 day appeal deadline in other situations where the appeal was meritorious and the Commission wanted to address the merits. The District urges the FCC to exercise its discretion similarly in this matter to grant the requested relief. See, e.g., *Request for Waiver by Marconi Communications, Inc.*, DA 12-915, CC Docket No. 02-6 (Order released June 12, 2012) in which the FCC stated, “We also find that a waiver of the filing deadline in the instant matter is in the public interest because Marconi should prevail on the merits of its appeal.”

promptly routed to the newly responsible personnel. Unfortunately, despite these best of intentions, the District does not have a record of having received the 486 Urgent Reminder Letter even though all SLD correspondence was routed to the new person in charge of E-rate.

The District has timely taken steps to comply with E-rate whenever it became aware that it had missed a procedural deadline. Prompt submission of an appeal upon discovering the E-rate problem have been found to constitute just cause and special circumstances in other situations to justify waiving the appeal deadline.¹⁰ Downingtown submits that its situation is analogous and a waiver of the 60 day appeal deadline is in the public interest.

IV. Merits of Appeal

Recognizing that the Form 486 deadline is a procedural, not substantive rule, the FCC routinely has approved waivers of the filing deadline for Form 486 based on similar circumstances experienced by Downingtown.¹¹ In particular, the *Children of Peace* appeal

¹⁰ *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011, DA 11-1332, n.4. Canutillo Independent School District experienced staff turnover and weather related problems and missed the BEAR deadline and the appeal filing deadline. Preble Shawnee Local School District explained that its appeal was filed late because of staff illness, personnel changes and confusion regarding the E-rate application rules.

¹¹ See, e.g., *Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885; *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Academy St. Benedect-Stewart, et al.*, Order Released December 16, 2010, DA 10-2352; *Requests for Review and/or Waiver of Decisions of the Universal Service Administrator by Bancroft Health, et al.*, Order released August 3, 2011, DA 11-1239; *Request for Review and/or Waiver of Decisions of the Universal Service Administrator by ABC Unified School District, et al.*, Order released August 4, 2011, DA 11-1332, *Request for Waiver or Review of Decisions of the Universal Service Administrator by Aberdeen School District, et al.*, Order released March 5, 2012, DA 12-300; *Request for Review or Waiver of Decisions of the Universal Service Administrator by Beebe Public Schools, et al.*, Order released April 12, 2012; *Requests for Waiver and Review of Decisions of the Universal Service Administrator by Annunciation Elementary School, et al.*, Order released June 18, 2012, DA 12-957; *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bastrop Independent School District, et al.*, Order released December 26, 2012, DA 12-2049; *Requests for Review or Waiver of Decisions of the Universal Service Administrator by Bank Street School for Children, et al.*, Order released February 25, 2013, DA 13-237

decision makes clear that common reasons accepted in support of 486 waiver request include staff turnover and confusion about program rules.¹² Most recently, less than one week after issuing the *Carbondale Appeal Order*, the Commission granted 16 requests for waiver of the form 486 deadline in the *Bank Street for the Children* appeal decision consistent with its precedents.

In granting numerous appeals and requests for waiver of filing deadlines in the 2006 *Arkansas DIS Appeal*, the Commission explained:

As the Bureau found in the *Alaska Gateway Order*, given that the applicants missed a USAC procedural deadline and did not violate a Commission rule, we find that the complete rejection of each of these applications is not warranted. We note that the primary jobs of most of the people filling out these forms include school administrators, technology coordinators and teachers, as opposed to staff dedicated to pursuing federal grants, especially in small school districts or libraries. Thus, even when a school or library official becomes adept at the application process, unforeseen events or emergencies may delay filings in the event there is no other person proficient enough to complete the forms. Furthermore, some of the errors may have been caused by third parties or unforeseen events and therefore were not the fault of these applicants. Notably, at this time, there is no evidence of waste, fraud or abuse, misuse of funds, or a failure to adhere to core program requirements.¹³

The Downingtown School District's technology director is responsible for a myriad of responsibilities only one of which is E-rate compliance. He began his employment with the District in October of 2011, right around the time that the FY 2011 Form 486 was due for the three funding commitment decisions letters that were dated June 23, 2011. He took over the E-rate responsibility from a consultant who was temporarily hired to serve in the technology director role. He has since left the District and was responsible for ensuring that the FY 2011 Form 486 was submitted.

¹²*Requests for Waiver of Decisions of the Universal Service Administrator by Children of Peace School, et al.*, Order released May 20, 2010, DA 10-885, n. 17.

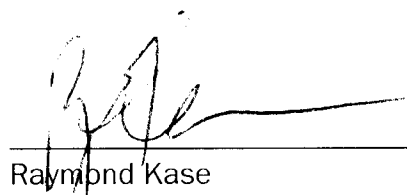
¹³ *Requests for Review and Waiver of Decisions of the Universal Service Administrator by the State of Arkansas, Department of Information Systems, et al.*, Order released June 13, 2008, DA 08-1418 at ¶8 (footnotes omitted).

The new technology director, while familiar with E-rate, is not an E-rate expert and did not know anything was amiss until October of 2012 when he discovered for the first time that the Form 486 for FY 2011 had not been submitted. All throughout FY 2011 and continuing into the present the District has been CIPA compliant. Since the FY 2011 Form 486 mishap, the District has taken steps to ensure that it is compliant with all E-rate deadlines for FY 2012 and FY 2013.

V. Conclusion

For the reasons stated above, the Downingtown School District respectfully requests the FCC to grant the District's Application for Review; approve the waiver of the 60 day appeal deadline and the Form 486 filing deadline; restore the District's Form 486 service start date to July 1, 2011 for FRNs 2201220, 2216835 and 2217132; waive the invoice deadline for the three Funding Requests at issue; and, permit the District to submit Form 472 reimbursement forms to recoup the E-rate discount amount for the period July 1, 2011 through June 26, 2012 for the three funding requests that are the subject of this appeal.

Respectfully submitted,



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September 30, 2013